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Ontario. Laws, statutes, etc.

Memorandum re qualifica-  
tion and duties of  
scrutineers





Memorandum  
Re Qualification and  
Duties of Scrutineers *v-b*  
(Election Act.)

1945



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# SCRUTINEERS

## Appointment

Every candidate is entitled to appoint two agents, commonly known as scrutineers, to be present on his behalf at each polling place, and if he neglects to do so volunteers may claim the right to represent him. The appointment should be in writing signed by the candidate but no particular form is prescribed. Not more than two agents for each candidate may be present in the polling place at the same time. These agents must take the oath of secrecy and should see that it is taken by the deputy returning officer, poll clerk and constable and the agents of other candidates.

## Who May Not Act as Scrutineers

A person who by reason of his official position is disqualified from voting under section 15 of The Election Act may not be appointed to act as agent for a candidate. Persons so disqualified are,—judges of the Dominion and Provincial courts, clerks of the peace, Crown attorneys and police magistrates in cities and towns having a population of 5,000 or over. The penalty for any such person acting as agent or voting is \$2,000.

It appears to be lawful to pay scrutineers for their services but where a scrutineer has been paid or has been promised or expects to receive pay he cannot take the oath of a voter and is disqualified under section 16 of The Election Act.

## Voting at Polling Place Where Stationed

A person who have been appointed as scrutineer or as deputy returning officer or poll clerk may apply to the returning officer for a certificate which will enable him to vote at the polling place at which he is stationed during the polling day. The certificate is to bear the date upon which it is signed by the returning officer and the request must be made to the returning officer at least two days before the polling day. If the returning officer finds that the applicant is not entitled to the certificate he should refuse to grant the certificate and is bound to enter in the list to be kept by him of persons applying for certificates, the name of the person so refused and the ground for refusal. This list is open to inspection by any candidate or by a voter.

The returning officer must not give certificates to more than two scrutineers for the same candidate at one polling place and before

granting the certificate he must have a personal or written application from the applicant. There has been in existence a very vicious practice of issuing these certificates in blank. Attention has been called to this and a returning officer so acting in future will do so at his peril as he incurs a penalty of \$400.

A scrutineer, deputy returning officer or poll clerk having such a certificate may only vote at the polling place to which he is assigned if he is actually on duty there and he must be sworn, that is, he must take one or other of the oaths of qualification of a voter, and the fact that he has voted under a certificate is to be entered in the poll book as well as the fact of his having been sworn.

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## SECTIONS OF THE ELECTION ACT DEALING WITH SCRUTINEERS AND AGENTS

### 1. PERSONS WHO CANNOT ACT AND ARE DISQUALIFIED.

A person who, by section 15, is disqualified and incompetent to vote, or who within eight years has been found guilty by a competent tribunal of a corrupt practice or reported for a corrupt practice by an election court, shall not act as agent for a candidate at an election; and any person violating this enactment shall incur the same penalty as if he had voted at the election. (Sec. 10, Election Act.)

The persons mentioned in section 15 are judges, clerks of the peace, Crown attorneys and police magistrates in cities and towns having a population of 5,000 or over.

### 2. A CANDIDATE MAY PERFORM THE DUTIES OF AN AGENT EXCEPT HIS OFFICIAL AGENT.

A candidate may himself undertake the duties which any agent of his, except his official agent, might have undertaken, if appointed, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act attend, except at the marking of a ballot under section 100. (Sec. 11, Election Act.)



**3. NON-ATTENDANCE OF AGENT DOES NOT INVALIDATE ACTS DONE IN HIS ABSENCE.**

Where in this Act expressions are used requiring or authorizing any act to be done in the presence of the agents of the candidates, the non-attendance of any agent shall not invalidate the act done. (Sec. 12, Election Act.)

**4. AGENT WHO RECEIVES OR EXPECTS TO RECEIVE ANY REWARD FOR SERVICES CANNOT VOTE.**

No person shall be entitled to vote who, at any time, before or during the election, has been employed as counsel, agent, solicitor or clerk or in any other capacity by a candidate or by any person at or in reference to the election, or for the purpose of forwarding the same, and who has received or expects to receive, either before, during or after the election, from any candidate or from any person, for acting in such capacity, any sum of money, fee, office, place or employment, or any promise, pledge or security therefor. (Sec. 16 (2), Election Act.)

**5. AGENT MAY VOTE AT POLLING PLACE WHERE EMPLOYED.**

(1) The returning officer, on the request of any person entitled to vote, who has been appointed deputy returning officer or poll clerk, or agent of any of the candidates at a polling place other than the one at which he is entitled to vote, shall give to such a person a certificate (Form 24), that he is entitled to vote at the polling place at which he is stationed during the polling day, and the certificate shall bear the date upon which it is signed by the returning officer.

(2) The returning officer shall not give such certificate until he has ascertained by reference to the polling list that the applicant is entitled to vote and after giving such certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling subdivision or polling place in which the applicant appears by the polling list to be entitled to vote, and the person to whom the certificate has been given shall not thereafter be entitled to vote in such polling subdivision or polling place.

(3) The returning officer shall not be required to give a certificate under this section unless requested to do so at least two days before polling day.

(4) The certificate shall name the polling place at which the person is to be permitted to vote.

(5) The returning officer shall enter in a list the name, residence and occupation of every person to whom he gives a certificate under this section, the polling place at which such person is under the certificate authorized to vote, and the polling subdivision or polling place in or at which such person appears by the polling list to be entitled to vote and state therein whether the certificate is granted to him as deputy returning officer, poll clerk or agent, and if as agent, the name of the candidate for whom he is agent, and the entry shall be made before the certificate is delivered.

(6) The returning officer shall also enter in the list the name of every person applying for a certificate to whom it was refused with the ground of refusal, and, if the last mentioned person claimed to be the agent of a candidate the name of the candidate, and the list shall be open to inspection by a candidate or by his agent or by a voter.

(7) A returning officer shall not give certificates to more than two agents of the same candidate at one polling place and he shall not give a certificate under this section except upon the personal or written request of the applicant, and a returning officer who gives a certificate in contravention of this subsection shall incur a penalty of \$400. (Sec. 85, Election Act.)

## 6. ON PRODUCTION OF CERTIFICATE MAY VOTE.

(1) On the production of the certificate the voter shall have the right to vote at the polling place named therein; but the certificate shall not entitle a voter to vote there unless he has been actually engaged there as deputy returning officer, poll clerk, or agent during polling day, or entitle an agent to vote who is disqualified under section 16.

(2) A person who receives a certificate, whether a deputy returning officer, poll clerk or agent, shall not vote until he has taken one or other of the oaths of qualification, and any person violating



the provisions of this subsection shall incur a penalty of \$400; and every vote cast in contravention of this subsection shall be null and void.

(3) The oath shall be administered to a deputy returning officer by the poll clerk, and to a poll clerk or agent by the deputy returning officer.

(4) The deputy returning officer shall enter, or cause to be entered, in the columns for remarks in the poll book (Form 7), opposite the name, residence and occupation of every person, including himself if he so votes, voting under the authority of a certificate, the words "Voted under certificate."

(5) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot paper.

(6) The deputy returning officer shall enclose all certificates in one envelope. (Sec. 86, Election Act.)

## **7. AGENTS ENTITLED TO HAVE BALLOTS COUNTED BEFORE THE POLL OPENS.**

(1) The deputy returning officer shall attend at the polling place at least fifteen minutes before the hour fixed for opening the poll.

(2) During such fifteen minutes, agents and voters entitled to be present in the polling place during polling hours shall be entitled to have the ballot papers intended for use thereat counted in their presence before the opening of the poll, and to inspect such ballot papers, and all other papers, forms and documents relating to the poll. (Sec. 91, Election Act.)

## **8. MAY REQUIRE VOTER TO BE SWORN.**

Subject to the provisions of sections 86 and 94, the deputy returning officer shall not receive the vote of any person whose name is not entered on the polling list, but shall receive the vote of every person whose name is entered thereon, if such person, where required by a candidate, or his agent, or by the deputy returning officer, takes the oath of qualification (Forms 1, 2, 30, 31 and 32 and the oath of allegiance (Form 29) or whichever is requested to be taken. (Section 94, Election Act.)

## 9. WHEN TO ADMINISTER OATH TO DEPUTY RETURNING OFFICER.

If a deputy returning officer votes at the polling place at which he has been appointed to act, the poll clerk or in his absence the agent of a candidate authorized to be present may administer to him the oath to be taken by a voter. (Sec. 96, Election Act.)

## 10. TO BE PRESENT AT MARKING BALLOT FOR INCAPACITATED PERSON.

(1) The deputy returning officer on the application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by this Act, shall require the voter making such application to make an oath, Form 33, of his incapacity to vote without assistance, and shall thereafter assist such voter by marking his ballot paper in the manner directed by such voter in the presence of the sworn agents of the candidates, or of the sworn electors representing the candidates in the polling place and of no other person, and place such ballot in the ballot box.

(2) The deputy returning officer shall either deal with a blind voter in the same manner as with an illiterate or otherwise incapacitated voter, or at the request of any blind voter who has taken the oath, Form 33, and is accompanied by a friend, shall permit such friend to accompany the blind voter into the voting compartment and mark the voter's ballot for him.

(3) Any friend who is permitted to mark the ballot of a blind voter as aforesaid, shall first be required to make an oath, Form 34, that he will keep secret the name of the candidate for whom the ballot of such blind voter is marked by him, and no person shall at any polling place be allowed to act as a friend of more than one blind voter.

(4) The deputy returning officer shall enter in the column for remarks in the poll book opposite the voter's name, the reason why such ballot paper was marked by him, or by a friend of the voter. (Sec. 100, Election Act.)



**11. NUMBER OF AGENTS WHO MAY BE PRESENT DURING VOTING.**

Preference to be given those having written authority.

(1) In addition to the deputy returning officer, the poll clerk, the constable or constables, the candidates and their agents, not exceeding two in number for each candidate, and, in the absence of agents, two voters to represent each candidate on the request of such voters, and no other shall be permitted to remain in the polling place during the time the poll remains open and at the counting of the votes.

(2) An agent bearing a written authorization from the candidate shall always be entitled to represent him in preference to, and to the exclusion of any two voters who might otherwise claim the right of representing such candidate. (Sec. 111, Election Act.)

**12. RIGHT TO EXAMINE BALLOT PAPERS IN COUNTING VOTES, AND MAY BE PRESENT AT COUNT BY DEPUTY RETURNING OFFICER.**

Immediately after the close of the poll, the deputy returning officer shall first place all the cancelled and declined ballot papers in separate envelopes and seal them up, and shall then count the number of voters whose names appear by the poll book to have voted, and make an entry thereof on the line immediately below the name of the voter who voted last, thus:—*The number of voters who voted at this election in this polling place is (stating the number)*, and he shall sign his name thereto; then, in the presence and in full view of the persons entitled to be present, he shall open the ballot box and proceed to count the number of votes for each candidate, giving full opportunity to those present to examine each ballot paper. (Sec. 113, Election Act.)

**13. MAY WRITE NAME ON FLAP OF AND SEAL ENVELOPE CONTAINING BALLOT PAPERS.**

(1) All the ballot papers not rejected by the deputy returning officer shall be counted and an account kept of the number of ballots cast for each candidate, and of the number of rejected and cancelled

ballot papers, and all the ballot papers indicating the votes given for each candidate respectively shall be put into a separate envelope.

(2) All rejected and unused ballot papers respectively, shall be put into separate envelopes, which shall be endorsed so as to indicate their contents, and shall be sealed by the deputy returning officer, and any agent present may write his signature across the flap of the envelope and may also affix his seal. (Sec. 116, Election Act.)

#### **14. MAY SIGN STATEMENT OF POLL.**

(1) The deputy returning officer shall make out a statement in triplicate (Form 35), one part to remain attached to the poll book, another to be retained by him, and the third to be enclosed by him in a special envelope supplied for the purpose, which he shall seal and deposit in the ballot box.

(2) The statement shall forthwith be signed by the deputy returning officer and poll clerk and such of the candidates or their agents as may be present, and may desire to sign it.

(3) The deputy returning officer shall then deliver to each of the candidates, or to their agents, or, in the absence of the candidates, and agents, to the voters present representing the candidates, a certificate (Form 36), of the number of ballots cast for each candidate, and of the number of rejected ballot papers. (Sec. 117, Election Act.)

#### **15. RIGHT TO ATTEND RECOUNT OR FINAL ADDITION BY RETURNING OFFICER.**

The returning officer and the election clerk shall be present at the recount or final addition, and each candidate shall be entitled to be represented by not more than three agents, and may himself be present. (Sec. 135 (1), Election Act.)

#### **16. RIGHT TO HAVE SPECIAL CONSTABLES SWORN IN.**

On a requisition in writing made by a candidate or by his agent, or by two or more voters, a returning officer or deputy returning officer shall swear in as many special constables as may be necessary. (Sec. 156, Election Act.)



## **17. TO TAKE OATH OF SECRECY.**

Every returning officer and every officer, clerk, constable, agent and other person authorized to attend at a polling place, or at the counting of the votes shall, before entering on his duties, take the oath of secrecy (Form 42). (Sec. 162, Election Act.)

## **18. EFFECT OF CORRUPT PRACTICE BY AGENT.**

If an election court determines and reports that a corrupt practice has been committed by a candidate or by his agent, whether with or without the actual knowledge and consent of the candidate, the election of the candidate shall, except in the case mentioned in section 178, be void. (Sec. 177, Election Act.)





Statutes      Ontario. Laws, statutes, etc.  
Ont.              Memorandum re qualifica-  
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                    scrutineers

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